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3
4 UNITED STATES DISTRICT COURT
5 WESTERN DISTRICT OF WASHINGTON
6 AT SEATTLE

7 VENICE PI, LLC,

8 Plaintiff,

9 v.

10 EDWARD JILES; MICHAEL SMITH;
11 BILLY JOE GAMBILL; TSIMAFEI
SHAPAVAL; FAIMAFILI MIKA; ROBERT
BOVITZ; and JONATHAN GARCIA,

12 Defendants.

C17-1211 TSZ

MINUTE ORDER

13 The following Minute Order is made by direction of the Court, the Honorable
14 Thomas S. Zilly, United States District Judge:

15 (1) Plaintiff's motion to dismiss counterclaims and strike affirmative defenses
16 asserted by defendant Michael Smith, docket no. 48, is GRANTED in part and DENIED
in part as follows.¹

17 (a) Smith's affirmative defense of comparative negligence is
STRICKEN with prejudice as being inapplicable to a claim of copyright
18 infringement.

19 (b) Smith's affirmative defense of illegality or fraud is STRICKEN
without prejudice as insufficiently pleaded, see Fed. R. Civ. P. 9(b), and with
20 leave to amend within fourteen (14) days of the date of this Minute Order.

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22 ¹ Plaintiff's motion to strike, docket no. 60, Smith's supplemental response, docket no. 59, is DENIED.
23 The Court does not view Smith's supplemental brief as an improper surreply, but rather as a response to
the various documents plaintiff submitted on February 5, 2018, see docket nos. 52-58, approximately
three weeks after it filed its reply.

1 (c) Smith's affirmative defense of de minimis non curat lex is also
2 STRICKEN with prejudice. Under the Copyright Act, even if a plaintiff suffers
3 no or merely trifling damages as a result of a proven infringement, such plaintiff
4 may still seek statutory damages of at least \$200. 17 U.S.C. §§ 504(a)(2)&(c)(2).
5 Thus, Smith may not escape liability for any copyright infringement on the theory
6 that only a tiny portion of a film that rents for just a few dollars was involved. The
7 Court, of course, makes no ruling at this time concerning whether Venice PI, LLC
8 can demonstrate the requisite infringement.

9 (d) Plaintiff's motion to dismiss is otherwise DENIED.

10 (2) The Clerk is directed to send a copy of this Minute Order to all counsel of
11 record and to pro se defendant Michael Smith.

12 Dated this 22nd day of May, 2018.

13 William M. McCool
14 Clerk

15 s/Karen Dews
16 Deputy Clerk